

## DETAILED ACTION

1. Applicant's amendment and remarks filed on 09/30/2009 are acknowledged.

Claims 1, 3 – 18 and 20 – 22 are pending.

Claims 3 and 10 – 16 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 04/09/2007.

**Claims 1, 4 – 9 and 17 – 22 are presently under consideration.**

2. The rejections of record have been withdrawn in view of Applicant's amendment and arguments, except as reiterated herein.

3. The following is a quotation of the appropriate paragraphs of **35 U.S.C. 102** that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

*(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

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4. Claims 1, 4 – 9 and 17 – 22 stand rejected under **35 U.S.C. 102(e)** as being anticipated by Yoshinaga et al. (US Patent No. 7,482,325; of record), for the reasons of record.

Applicant's arguments have been fully considered but have not been found convincing.

Applicant argues (page 6 of Remarks, first full paragraph) that the sequence of the B7RP-2-Fc polypeptide of Yoshinaga et al. is different from the instantly recited SEQ ID NO:7, and provides the corresponding sequence alignment.

In response, the alignment provides by Applicant demonstrates that the B7RP-2-Fc polypeptide of Yoshinaga et al. comprises the instantly recited SEQ ID NO:7, and thus is within the scope of the "soluble form of B7-H3" as recited e.g. in the instant claim 5.

Applicant further argues (ibid., second full paragraph) that the methods claimed by Yoshinaga et al. involve administration of a polypeptide of SEQ ID NO:2 fused to Fc, as opposed to the B7-H3 polypeptide of the instant claims.

In response, as noted above, a fusion of B7RP-2 to Fc is a soluble form of B7RP-2/B7-H3, and thus is within the scope of the instantly recited "soluble form of B7-H3."

Applicant further addresses an Example of Yoshinaga et al. involving B7RP-2 knockout mice.

It is not clear how this Example relates to the alleged patentable distinctions between the claims of Yoshinaga et al. and the instant claims.

Therefore, the rejection of record is maintained for the reasons of record, as it applies to the amended claims. The rejection of record is incorporated by reference herein, as if reiterated in full.

**5. Conclusion: no claim is allowed.**

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is (571)272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram R. Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ILIA OUSPENSKI/

ILIA OUSPENSKI, Ph.D.

Primary Examiner

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January 7, 2010